

28 JANUARY 1948

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I N D E X
of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
3145	3858		Affidavit of Fritz von Petersdorf		38420

Wednesday, 28 January 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment, at 0930.

Appearances:

For the Tribunal, all Members sitting, with the exception of: HONORABLE JUSTICE LORD PATRICK, Member from the United Kingdom of Great Britain, not sitting from 0930 to 1600; HONORABLE JUSTICE HENRI BERNARD, Member from the Republic of France, not sitting from 1330 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

Whalen & Morse

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present except SHIRATORI who is represented by counsel. The S. zamo prison surgeon certifies that he is ill and unable to attend the trial today. The certificate will be recorded and filed.

Dr. UZAWA.

DR. UZAWA: On behalf of the defense panel
I should like to apply for a ten day recess immediately
upon the conclusion of the present phase. This period
of recess is necessary for the preparation of our
surrebuttal. Twelve of the accused, namely, ARAKI,
HATA, HIROTA, ITAGAKI, KILO, MATSUI, MINAMI, MUTO,
OSHIMA, SHIGAMITSU, SHIKATORI and TOGO desire to offer
surrebuttal. Although the defense is intending to
present about twenty-six witnesses and over sixty docu-
ments, only a few of them have been prepared. The de-
sire is uppermost in our minds to assure smooth progress
to the trial, and it is for that very reason that we
are making this application for a recess. I request
that our application be accepted.

24 THE PRESIDENT: Did you give the prosecution
25 notice that you were going to make this application
this morning?

1 MR. BLAKENEY: I believe that no notice was
2 given, your Honor. And although I was going to ask
3 leave to add a few words, perhaps I should wait until
4 such time as the prosecution shall have been notified.

5 THE PRESIDENT: Yes, we may see fit to ask for
6 the prosecution's views.

7 MR. BLAKENEY: I will give them notice then
8 for some later time.

9 THE PRESIDENT: Mr. Cunningham.

10 MR. CUNNINGHAM: I should like the same priv-
11 ilege as Mr. Blakeney because I have a few special
12 remarks concerning the accused OSHIMA that I would
13 like to expand upon Dr. UZAWA's statement.

14 THE PRESIDENT: Major Blakeney.

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1 A. E. B Y K O V, called as a witness on behalf of the
2 prosecution, resumed the stand and testified
3 through Russian interpreters as follows:

4 CROSS-EXAMINATION

5 BY MR. BLAKENEY (Continued):

6 Q Witness, of how many men did each of the
7 advance patrols sent out to the border 20 or 30 kilo-
8 meters from the Halha River consist?

9 A The state border in the area of the Khalkin-
10 gol River was guarded only by the 7th Mongolian Border
11 Guard outpost which was, as I have said, 120-150 men
12 strong.

13 Q What sort of terrain is it around what you
14 speak of as the national border?

15 A I call the state border line -- what I call
16 the state border line is the east bank of the Halha
17 River, that is the territory between the bank of the
18 Halha River and 20-22 kilometers of that east of that
19 river up to the state border line of the Mongolian
20 Peoples Republic. The territory -- the terrain features
21 of this territory are very rough. There are hills or
22 barkhans 50-60 meters high, ravines 35-40 meters deep,
23 and this territory is covered by small bushes.

24 Q The boundary, the national boundary as you
25 refer to it is not a river, is it?

1 A The border does not run along the river, it
2 runs 20-25 kilometers east of the river.

3 Q Now, you have told us that very, very many
4 times. Will you please answer my question now: Is
5 the boundary a river?

6 A In answer to your question I may say that
7 the river is not the boundary line.

8 Q Is the boundary a mountain range?

9 A There are no mountain ranges on the state
10 border line that is 20-25 kilometers east of the river.

11 Q Then how is the boundary or state border
12 marked?

13 A The state border line was marked by obos.

14 Q How far apart are the obos?

15 A Approximately from 8 to 12 kilometers.

16 Q Is there anything to mark the border between
17 obos?

18 A Between obos the state border line was marked
19 by border monuments.

20 Q Describe those, will you?

21 A Those were wooden posts with plates bearing
22 inscriptions.

23 Q In what language?

24 A On the side of the Mongolian Peoples Republic
25 they were in Mongolian.

Q Can you read Mongolian?

A I can't either read or speak Mongolian.

Q Who erected these border monuments?

A It was not my duty to get information as to
who put the border -- to who and when put the border
monuments on the state border line.

Q Is that equivalent to saying you don't know?

A Yes. I shall repeat that it was outside the
scope of my duties to find out who and when set up
those posts.

Q And I repeat: Does that mean that you don't
know who erected the monuments?

A I am speaking about the state border line
of the Mongolian Peoples Republic.

1 Q Yes, we both are. But I am asking you if you
2 know, yes or no. Do you or do you not know who erected
3 those monuments?

4 A Mr. Counsel, will you please let me finish
5 my reply?

6 Q No, I will not. I don't want a speech. I
7 want a one word answer, whether you do or do not know
8 who erected those monuments.

9 A I am not going to deliver speeches here. I
10 ask only to let me finish my thought.

11 MR. BLAKENEY: I request --

12 THE PRESIDENT: Well, I ask the question now
13 and you must answer yes or no; you may add an explana-
14 tion if necessary.

15 Do you know who erected those monuments you
16 speak of?

17 THE WITNESS: I don't know who erected the
18 monuments.

19 THE PRESIDENT: Well, is it worth while
20 pressing for answers of that type of question? It
21 seems to be his way of saying "no." Instead of giving
22 the answer he gives the reason for the answer which
23 is not expressed. Many people do that.

24 BY MR. BLAKENEY (Continued):

25 Q Were these boundary monuments in existence

1 from the time you first became familiar with the
2 Nomongan area?

3 A When I first visited the sector of the border --
4 when I first visited in March the sector of the border
5 guarded by the 7th Mongolian Border Guard outpost I
6 personally saw those border markers on the state border
7 line.

8 RUSSIAN MONITOR: Border monuments.

9 Q Did those monuments run the entire length of
10 the border in that area?

11 A In that section, that is, in the section of
12 the 7th Mongolian Border Guard outpost, those monuments
13 were set up the entire length of the border.

14 Q How far apart were they?

15 A From one to one and a half kilometers.

16 Q What size were these monuments?

17 A From two and a half to three meters.

18 Q In height?

19 A Yes, in height.

20 Q And they were written on one side in Mongolian?

21 A Yes, on the side of the Mongolian territory the
22 inscriptions were in Mongolian.

23 Q And on the other side?

24 A I do not know that.

25 Q Did the border run in a straight line from the

to obo?

1 A Yes, from obo to obo the state border line
2 runs in a straight line.

3 Q Do you know what was the wording of the inscrip-
4 tion on these border monuments, the meaning?

5 A No, since I can't either read or speak Mongolian
6 I have no knowledge of what those inscriptions meant.

7 Q Do you know that during the progress of the
8 Nomongan Incident Russian or Mongolian aircraft bombed
9 the city of Tsitsihar in Manchuria?

10 A No, I know nothing about that.

11 THE PRESIDENT: Did he say what was the distance
12 between the monuments?

13 MR. BLAKENEY: Yes, sir. He said one to one
14 and a half kilometers.

15 THE PRESIDENT: The monuments.

16 Q The country thereabouts is uninhabited, is it
17 not, or largely so?

18 A Yes, this area is uninhabited.

19 MR. BLAKENEY: That concludes the cross-examin-
20 ation.

21 THE PRESIDENT: General Vasiliev.

22 GENERAL VASILIEV: May the witness be excused
23 on the usual terms?

24 THE PRESIDENT: He is excused accordingly.
25 (Whereupon, the witness was excused.)

CHOGDAN

1 GENERAL VASILIEV: May the witness Chogdan be
2 called?

3 MARSHAL OF THE COURT: Mr. President, the
4 witness Chogdan is in court and is prepared to be sworn
5 on the certificate of witness of the Mongolian Peoples
6 Republic.

7 P U N T S U G I N C H O G D A N, called as a witness
8 on behalf of the prosecution, was duly sworn.

9 THE PRESIDENT: Has any additional interpreter
10 been sworn in?

11 MARSHAL OF THE COURT: No, Mr. President, no
12 additional interpreter has been sworn in.

13 THE PRESIDENT: Apparently the interpreter
14 in this case has already been sworn.

15 MARSHAL OF THE COURT: That is correct.

16 THE PRESIDENT: I should like to know just what
17 is going to happen. I understand this witness speaks
18 Mongolian and that is understood by a Russian inter-
19 preter already sworn who can speak English.

20 GENERAL VASILIEV: A special interpreter came
21 along with the witness Chogdan who knows both Mongolian
22 and Russian.

23 THE PRESIDENT: Has he been sworn in?

24 MARSHAL OF THE COURT: Not by me, Mr. President.

CHOGDAN

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4 witness Chogdan is in court and is prepared to be sworn
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17 is going to happen. I understand this witness speaks
18 Mongolian and that is understood by a Russian inter-
19 preter already sworn who can speak English.

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21 along with the witness Chogdan who knows both Mongolian
22 and Russian.

23 THE PRESIDENT: Has he been sworn in?

24 MARSHAL OF THE COURT: Not by me, Mr. President.

1 THE PRESIDENT: Well, he must be. Every
2 interpreter must be sworn. The rules of the Tribunal
3 provide for that.

4 GENERAL VASILIEV: We certainly don't object
5 to that and that will be done.

6 THE PRESIDENT: The witness had better be
7 stood down until it is done, General Vasiliev.

8 ("hereupon, the witness was excused.)

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1 THE PRESIDENT: Major Blakeney.

2 MR. BLAKENEY: This might be the opportune
3 time to observe, your Honor, in the interest of saving
4 time later, that apparently our interpreter here is
5 to be two men.6 THE PRESIDENT: That has happened before me
7 in another jurisdiction.8 MR. BLAKENEY: Well, of course, I am sure
9 we all recognize the difficulties entailed by wit-
10 nesses speaking unusual languages. Nevertheless,
11 this same question came up during the China phase,
12 and there was some discussion of the dangers of a
13 double translation and in the event the Tribunal
14 declined to permit it:15 THE PRESIDENT: We will not permit it now
16 if there is an interpreter available who speaks both
17 Mongolian and English.18 MR. BLAKENEY: I was going to suggest that
19 perhaps the appropriate thing now would be, as was
20 decided then, to require the production of such
21 interpreter before the testimony is received.22 GENERAL VASILIEV: I will explain the position
23 with the interpreters.

24 THE PRESIDENT: Yes, do so.

25 GENERAL VASILIEV: We have several times

1 applied to the Language Section of the Tribunal to
2 find an interpreter who would speak both Mongolian
3 and Japanese, or one who would speak Mongolian and
4 English. Such interpreters were not found in Tokyo.
5 There are interpreters who know Mongolian and
6 Japanese, but they don't know Mongolian to such an
7 extent as to be able to interpret the modern Mongolian
8 language. Thus, upon agreement with the Chief of the
9 Language Section of the Tribunal we decided to find
10 the only possible way out, to have the interpretation
11 from Mongolian through Russian. I have been advised
12 that the Language Section of the Tribunal has under-
13 taken to check the accuracy of this translation and
14 is able to vouch that there will be no discrepancies.
15 This is all that we have been able to do.

16 THE PRESIDENT: How can they so vouch unless
17 they have among them a person who understands Mon-
18 golian, modern Mongolian? I think we ought to hear
19 Captain Kraft.

20 Perhaps you are referring to another section
21 of the language department.

22 MARSHAL OF THE COURT: Mr. President, may I
23 make a statement, sir?

24 Mr. M. R. Anderson is Chief of the Tribunal
25 Language Section, and I believe Captain Kraft

1 qualified in the arbitration portion.

2 Mr. Anderson is now in court, sir.

3 THE PRESIDENT: Will you come to the lectern,
4 Mr. Anderson, please?

5 Mr. Anderson, we had in the box a witness who
6 speaks modern Mongolian only. He is to be interpreted
7 by a man who speaks Russian but not English or Japanese.
8 We understand you have not available a man who speaks
9 and understands Mongolian and Japanese.

10 LANGUAGE SECTION CHIEF: No, sir.

11 THE PRESIDENT: Or Mongolian and English.
12 Either would do.

13 LANGUAGE SECTION CHIEF: We were unable to
14 find a Mongolian-English interpreter, but I understand,
15 your Honor, the Russians have a man who speaks both
16 Mongolian and Russian; so that our preparation for
17 the interpretation was made on the same basis as the
18 Russian to English.

19 THE PRESIDENT: If we use the services of
20 the interpreter now offered by the prosecution, have
21 you any means of checking?

22 LANGUAGE SECTION CHIEF: No, sir, we have
23 no other means than we have in regard to the regular
24 Russian interpretation. We have no check on that
25 either.

1 THE PRESIDENT: Well, some difficulty arises.
2 about it. Of course, the vilest murders and crime
3 might escape punishment if we refuse the services of
4 an interpreter. We were told that you could vouch
5 for the correctness of the translation of what this
6 witness will say, but is that so?

7 LANGUAGE SECTION CHIEF: The only check that
8 we have is on the Japanese and the English.

9 THE PRESIDENT: You cannot check what is
10 said in Mongolian; you don't know?

11 LANGUAGE SECTION CHIEF: Pardon me, sir.

12 THE PRESIDENT: You cannot check the Mon-
13 golian?

14 LANGUAGE SECTION CHIEF: No, sir, we cannot.
15 We do not check the Russian either.

16 GENERAL VASILIEV: I understand that persons
17 who know Mongolian, and among them a professor of the
18 Mongolian language, have been invited, and I under-
19 stand -- maybe I am wrong in saying so -- that there was
20 an understanding that these persons would be invited to
21 check on the accuracy of the translations. They are
22 certainly not on the staff of the Tribunal but they could
23 be invited, and I understand that it was done exactly so,
24 and if I was wrong that means I didn't know what was
25 finally done in that respect.

1 THE PRESIDENT: It seems to me that we will
2 have to receive this evidence in the way you propose,
3 but subject to objection by counsel which we will have
4 to take into consideration. It would mean that if a
5 man committed the vilest crime and the eyewitness was
6 a Mongolian, he would escape punishment because the
7 Court would not take the evidence of the Mongolian
8 interpreted by a person who was sworn to interpret
9 correctly and could do so.

10 GENERAL V/SILIEV: That is quite true.

11 THE PRESIDENT: I don't know. Of course,
12 different countries may take different views of this,
13 but this trouble would not exist in a British community.
14 Of course, the court would pay great weight to the fact
15 that the evidence was given in that form.

16 Can you offer anything better than you have
17 offered already? You have referred to a Japanese
18 professor. After all, we have not insisted upon inter-
19 preters being professors.

20 GENERAL VASILIEV: I can only suggest that
21 people who know Mongolian -- the professor, and there
22 are some more -- be detailed to assist the chief of the
23 Language Section in checking the Mongolian interpre-
24 tation.

25 THE PRESIDENT: We should have the sound track

1 operating while this witness is speaking so that there
2 can be a check in that way. That should give ample
3 security.

4 We will arrange for a check through the sound
5 track or something similar. Perhaps this will be
6 sufficient.

7 GENERAL VASILIEV: We will accept any offer
8 on your part.

9 May I proceed with other evidence?

10 THE PRESIDENT: Yes, you had better go on with
11 something else. It may take some time to arrange all
12 this.

13 GENERAL VASILIEV: I offer in evidence
14 prosecution document No. 3164, the report of the
15 Mongolian People's Republic Home Ministry on the viola-
16 tions of the Mongolian border by the Japanese-Manchurian
17 side in the period from 1935 to 1945.

18 This document is being introduced to rebut
19 the defense evidence to the effect that the Mongolian
20 border was not violated by the Japanese-Manchurian
21 side and that in general this border was of no interest
22 to the latter, record pages 23,018, 2029, 23,036, 22,595.

23 I do not intend to read this document.

24 THE PRESIDENT: Major Blakeney.

25 MR. BLAKENEY: I wish to object to the

1 reception of this document in evidence, and I point
2 out that it is a self-serving account purporting to
3 have been prepared by some department of the so-called
4 Mongolian People's Republic, of frontier violations
5 from the years 1935 to 1945. The excerpts now being
6 offered relate to the year 1939. This is not, however,
7 on its face a contemporaneous account, but is dated
8 the 3d of December, 1946, which is to say that it was
9 quite patently prepared for purposes of this trial.
10 It is in no sense rebuttal evidence as it is proffered
11 as being, but is in fact indistinguishable from the
12 testimony and other evidence offered in chief in the
13 Soviet phase of this case. And by the way, it was
14 not prepared as rebuttal evidence because its date is
15 half a year prior to the introduction of the defense
16 evidence in the Soviet phase. I submit that in those
17 circumstances its probative value is doubtful and its
18 importance is absolutely indiscernible in so far as
19 it relates to any issues being tried at this stage.
20

21 THE PRESIDENT: General Vasiliev.

22 GENERAL VASILIEV: This is a certificate
23 compiled by the authorities of the Mongolian People's
24 Republic concerning violations of the Mongolian
25 border, and it is similar to a certificate compiled
by the Japanese authorities on the same subject.

1 The defense has tendered the Japanese certificate and
2 it was admitted in evidence by the Tribunal, and what
3 probative value they have will be decided upon by the
4 Tribunal at a later stage.

5 THE PRESIDENT: What is the number of the
6 defense certificate?

7 MR. BLAKENEY: That defense document, your
8 Honor, if I may be permitted to interpose -- I cannot
9 give the number, but that document, I wish to point
10 out, was a contemporaneous account prepared by a
11 bureau of the Foreign Ministry, confidential, for its
12 own use, of the events therein contained, and was,
13 moreover, a simple tabulation of the number of inci-
14 dents, not a collection of details such as here pur-
15 ported to be given in what is now called a certificate.

16 THE PRESIDENT: What proof had we before us
17 other than a Japanese document drafted long after the
18 events? Did we have such proof? I cannot recall the
19 document. I would have to see it.

20 MR. BLAKENEY: The document to which I referred,
21 your Honor, and to which I assume counsel is referring,
22 was prepared not long after the event, but was the
23 report prepared in that year, 1939, of the activities
24 of the ministry.

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1 THE PRESIDENT: Well, this may be a similar
2 document. The parts are in inverted commas and numbered.
3 The numbers are not consecutive. This would seem to be
4 a document like the Japanese document.

5 MR. BLAKENEY: But it was prepared, your Honor,
6 ten years later and after this trial was in progress.

7 THE PRESIDENT: This is the Japanese certificate.
8 I understand, but this would appear to quote from con-
9 temporaneous documents. The numbering and quotation
10 marks suggest that, and I would like to be clear about
11 it.

12 GENERAL VASILIEV: We have made quotations with
13 regard to the most important events.

14 THE RUSSIAN MONITOR: Correction: Instead of
15 "quotations," "excerpts."

16 GENERAL VASILIEV (Continuing): And I have
17 omitted to mention, and I apologize for it before the
18 Tribunal, that the full certificate in Mongolian and
19 Russian has been filed with the Clerk of the Court and
20 is offered for identification.

21 THE PRESIDENT: Well, it is a pity to waste so
22 much time on one document, but we must be consistent.
23 We must be sure we are not admitting a document from
24 one side and rejecting similar documents from the other.

25 MR. BLAKENEY: Our difficulty, your Honor, in

connection with this document is this: that the docu-
1 ment is in Mongolian and the translation is from Russian
2 to English. There is nothing here which any of us can
3 read to make out what the facts are in the matter.
4

5 THE PRESIDENT: Well, the Japanese contemporaneous
6 reports were not produced. I think that is clear.
7 Copies were embodied in the certificate, is that so?

8 Well, do let us see that document. Mention the
9 number of it, General Vasiliev, and we shall look it up
10 and make a decision on that.

11 MR. BLAKENEY: I can, myself, obtain it during
12 the recess, if your Honors please.

13 THE PRESIDENT: Well, we have it, Major Blakeney,
14 but we do not know the number of the exhibit.

15 Go on with another document, and we will look
16 into it during the recess.

17 GENERAL VASILIEV: At the present moment, I
18 would not be able to name the number.

19 An extract from the official transcript of the
20 Nuernberg trial, being IPS document 3332, is now offered
21 in evidence. It contains testimony of the witness
22 Field-Marshall Paulus concerning the "Barbarossa" plan,
23 i.e., plan of the German attack on the U.S.S.R.

24 This document is being introduced for the purpose
25 of rebutting the defense evidence to the effect that

1 the Tripartite Pact and MATSUOKA's mission did not imply
2 any hostile actions against the U.S.S.R., that MATSUOKA
3 was not advised by Hitler and Ribbentrop of the attack
4 on the Soviet Union then being prepared and did not
5 promise to join the war on the side of Germany, record
6 pages 24,301 to -302, exhibit No. 1068; exhibit No.
7 3657, record pages 36,213 to -18.
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1 The witness Paulus testified at Nuernberg
2 that the plan of attack against the Soviet Union was
3 being worked out during the year of 1940 and completed
4 by November 1940.

5 The existence of the plan of attack against
6 the U.S.S.R. worked out by Hitler makes even more
7 real the plot between Hitler and MATSUOKA to carry on
8 joint actions against the Soviet Union which is contrary
9 to the defense allegations that such a plot did not
10 exist.

11 It seems to me that this document being an
12 extract from the transcript of Nuernberg Trial cannot
13 be an obstacle to the admittance of it in evidence,
14 because excerpts were received in evidence from the
15 defense, exhibit No. 2692-A.

16 THE PRESIDENT: Mr. Cunningham.

17 MR. CUNNINGHAM: If the Tribunal please, I
18 object to the introduction of this document for
19 several reasons. First, it doesn't bear on any of
20 the issues of this case; second, in piecemeal excerpts
21 as this is, it is meaningless and proves nothing. It
22 merely raises issues instead of answering them.

23 You will recall that pertinent excerpts
24 which we offered were rejected because they had no
25 direct bearing upon the issues involved here. The

1 document is directed toward the general issue, if
2 anything, and then only vaguely, so it does not assist
3 the Tribunal in any issue concerning any particular
4 accused here and it is not rebuttal evidence in any
sense.

5 I have read the document quite closely and
6 I do not see any mention in the document of any of
7 the things which are set out by the prosecution as
8 reasons for them offering it. MATSUOKA is not mentioned
9 in this document at all, and none of the defendants
10 in the dock are mentioned in this document. It has
11 no bearing on any of their participation. And no
12 Japanese at all are mentioned in this document. It
13 makes no reference to anything that any Japanese did.
14

15 Now, it is my submission that the document is
16 important more for what it does not say and infers,
17 but that importance is to our case and not to the
18 prosecution's.

19 We submit that if this document is admitted
20 it opens the right to the defense to bring in what
21 General Paulus said in cross-examination.

22 THE PRESIDENT: We have been reading this
23 document and we can see no reference to Japan or
24 Japanese in it. But we would like to hear the General
25 first.

1 GENERAL VASILIEV: We proved that Hitler
2 and Ribbentrop notified MATSUOKA as to the war
3 preparations of Germany against the U.S.S.R. We
4 proved that in these conversations MATSUOKA promised
5 on behalf of the Japanese Government that Japan would
6 join Germany in her war against the U.S.S.R.

7 The presence of the plan completely worked
8 out, the Plan of Barbarossa, which was a plan of
9 attack against the U.S.S.R., was thus a basis for
10 the conversations which took place later. This is
11 why the document is relevant in our viewpoint.

12 THE PRESIDENT: By a majority the objection
13 is sustained and the document rejected.

14 We will recess for fifteen minutes.

15 (Whereupon, at 1045, a recess was
16 taken until 1100, after which the proceed-
17 ings were resumed as follows:
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1 MARSHAL OF THE COURT: The International Mili-
2 tary Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Kraft.

4 LANGUAGE ARBITER (Captain Kraft): If the
5 Tribunal please, the following language corrections are
6 submitted: Exhibit No. 3799-A, second paragraph, lines
7 4 and 5, record page 37,791, line 6. Delete "we have
8 the Emperor somewhat change his ideas," and substitute
9 "unless he would somehow change his way of thinking."

10 Exhibit No. 3799-B, lines 14-16, record page
11 37,805, lines 2-5. Delete "According to . . . is not
12 given" and substitute "But, in one way of looking at it,
13 unless to some degree, the Imperial sanction is secured
14 through the Lord Keeper of the Privy Seal."

15 Exhibit No. 3810, paragraph 1, line 6 and
16 record page 37,880, lines 16-17. Delete "absolutely
17 against it and had always been."

18 THE PRESIDENT: General Vasiliev, we have looked
19 into this matter of IPR document No. 3164, being ex-
20 cerpts from the report of the Frontier Corps Department,
21 Home Ministry, Mongolian People's Republic. The Japan-
22 ese ~~original~~ contemporaneous reports were tendered for
23 identification at page 22,918 of the transcript, and that
24 was followed by an excerpt in the usual way, which was
25 accepted in evidence and made an exhibit. That is the

distinction.

1 GENERAL VASILIEV: I request that the ruling
2 of the Court as to our document be intimated.
3

4 THE PRESIDENT: I am pointing out that differ-
5 ence. You may make submission if you wish.
6

7 GENERAL VASILIEV: Defense document 2686-A
8 quotes summary data for a number of years. Reference
9 is made to page 23,480. I submit that we are entitled
to present summary data as well.
10

11 THE PRESIDENT: That raises another question.
12 We haven't that document.
13

14 GENERAL VASILIEV: This is a document on pre-
15 cisely the same subject.
16

17 THE PRESIDENT: Are you speaking of defense
18 document 1511, exhibit 2647-A?
19

20 GENERAL VASILIEV: Yes, but there are three
21 defense documents, 2685, 2686 and 2687. Therefore we
22 ask that our document be admitted.
23

24 THE PRESIDENT: I think I will have to look
25 into it further. Most of my time during the recess was
spent tending to a deputation about taking the Mongolian
witness' evidence, and I perhaps was not able to make
sufficient research in the few minutes I had. I would
like to defer this until I have had a chance to look at
all those documents. I have not had that opportunity.
26

1 GENERAL VASILIEV: I will pass over to the next
2 document.

3 May the witness Petersdorf be called?

4 If I understood the Court's decision correctly,
5 the preceding document, the testimony of Paulus, was
6 rejected.

7 THE PRESIDENT: I am reading a note from one
8 of my colleagues about this matter. I will have to ask
9 the English reporter to repeat what was said.

10 (Whereupon, the official court
11 reporter read the remarks of General Vasiliev.)

12 GENERAL VASILIEV: I would like the Court to
13 repeat its decision upon the previous document, the
14 testimony of Paulus. It is not clear to me whether
15 the document was received or rejected.

16 THE PRESIDENT: The objection was sustained
17 and the document rejected.

18 GENERAL VASILIEV: May the witness Petersdorf
19 be called in?

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VON PETERSDORF

DIRECT

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F R I T Z V O N P E T E R S D O R F, called as a witness on behalf of the prosecution, being first duly sworn, testified through a German interpreter as follows:

THE PRESIDENT: What is he going to speak in, German or English?

GENERAL VASILIEV: He is going to speak German.
THE PRESIDENT: He has the option, if he speaks German, but if he spoke good English perhaps we would prefer to hear him in English.

10
11 GENERAL VASILIEV: It seems to me that his
12 English is not so perfect that he could speak English,
13 although he understands much of it.

14 THE PRESIDENT: Well, let him testify in German.

DIRECT EXAMINATION

16 BY GENERAL VASILIEV:

17 Q Mr. Witness, what is your full name?

18 | A. Fritz von Petersdorf.

19 Q What is your last military rank in the German
20 Army?

21 A Lieutenant Colonel.

22 Q You were assistant of the German Military
23 Attaché in Tokyo, were you not?

A Yes.

GENERAL VASILIEV: May the witness be shown

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prosecution document 3145?

1 (Whereupon, a document was handed
2 to the witness.)

3 Q Examine this document, please, Mr. Witness.

4 A This is my document.

5 Q Is that your affidavit?

6 A Yes, that is my affidavit.

7 Q Are the contents thereof true and correct?

8

9 6. Have you given your testimony without any

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13 A Yes

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VON PETERSDORF

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GENERAL VASILIEV: I offer in evidence
1 prosecution document No. 3 '5, affidavit of Fritz von
2 Petersdorf, former Lieutenant Colonel of the German
3 Army and Assistant German Military Attaché in Tokyo.

4 The defense introduced evidence to the effect
5 that information received by Germany from the Japanese
6 General Staff concerning military position of the
7 U.S.S.R. was scarce and useless, record page 24,619.

8 To rebut this, witness Petersdorf will tell
9 what secret military information he himself received
10 at the Japanese Army General Staff.

11 The defense introduced evidence to the effect
12 that Japan not only was not preparing an attack against
13 the U.S.S.R. but was waiting for an attack on the part
14 of the Soviet Union (exhibit Nos. 2675, 2676, 2695,
15 record page 36,213).

16 To rebut this allegation witness Petersdorf will
17 tell what he personally heard from the former Premier
18 TOJO in the summer of 1942 concerning the preparation
19 of an attack against the Soviet Union by Japan.

20 I invite the Tribunal's attention to the fact
21 that during the examination of TOJO he stated that he
22 did not remember Petersdorf, but admitted that a conver-
23 sation with the German Ambassador Ott had taken place
24 in the summer of 1942, saying, however, that he did not
25

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1 recollect its contents and refusing to confirm that the
2 question of war against the U.S.S.R. had been touched
3 upon during this talk, record pages 36,797-98.

4 To rebut this Petersdorf will state the actual
5 facts.

6 To comply with the requirements of the re-
7 buttal phase, I shall not introduce the following parts
8 of the affidavit:

9 On page 3 of the English text questions and
10 answers beginning with the third and through the tenth,
11 that is, introducing from this page only the first two
12 and the last two questions and answers;

13 On page 5 the second, third, and fourth ques-
14 tions and answers;

15 The whole of page 6 with the exception of the
16 first two questions and answers;

17 On page 7 the first and the last questions and
18 answers;

19 On page 8 the first four questions and answers.

20 The balance of the affidavit is offered in
21 evidence. The parts of the documents are marked in
22 the copies served on the Tribunal.

23 THE PRESIDENT: Mr. Cunningham.

24 MR. CUNNINGHAM: If the Court please, I would
25 like to object to the entire affidavit of von Petersdorf

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before we accept it here. The entire document is objected
1 to for the reasons that it is full of opinions, conclu-
2 sions, surmise, speculation, third and fourth-degree
3 hearsay.

4 Since it is in question and answer form, it
5 is very difficult to segregate the opinion from the
6 facts. In order to comply with the rules which have
7 been enforced, it would be necessary to cut out sen-
8 tences and answers, making the whole unintelligible
9 and burdening the Tribunal with editing this document.
10 This we know they will not undertake to do.
11

12 Specific objections are prepared for the parts
13 of the document which are offered. Can we have a rul-
14 ing now on whether or not the document as a whole should
15 be rejected and the prosecution ordered to redraft the
16 thing, eliminating the opinions, conclusions, specula-
17 tions, and surmise? Now, would your Honors entertain an
18 objection to the whole and to the specific parts of it
19 at the same time?

20 THE PRESIDENT: No, continue with whatever
21 objections you have to make, Mr. Cunningham.

22 MR. CUNNINGHAM: Specific objection is offered
23 to each item with the exception of page 1, which is
24 only preliminary. The first seven questions and answers
25 on page 2 have no bearing on this case, have no probative

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value, deal with persons not involved in these proceedings, and concern matters only of a general nature.

On page 3 the first two questions are of no value, no importance. They shed no light on the case of any of the individual accused. The last three questions and answers come at a time when the prosecution depends upon a fourth-rate witness when they had the original participants available for examination and failed to even mention anything about the matter.

The data there is so uncertain that it is difficult to check. It is vague and contains quotations such as "TOJO gave to understand," and so on -- conclusions, speculations, inferences, and not one quotation.

Page 4 is filled with conclusions, opinion, speculation, and no facts, mere fourth-grade recitation of what someone else was supposed to have said.

Page 5 starts out: "Question 1: What is your opinion?"

On page 5 questions five and six are so general that if they are allowed it would require considerable time to cross-examine the witness on the matters covered in these items alone. These are pure generalities and nothing of any value.

On page 6 the first five questions are routine

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matters, no facts bearing on any of the issues.

1 On page 7 two items, one the grenade, concern
2 parties not involved in this proceeding, and the evi-
3 dence is immaterial. The item about grenade, two heads
4 of state sending a present to each other -- certainly
5 neither one of them is on trial here. The second item,
6 two telegrams are mentioned but not accounted for, and
7 therefore what they contained or other matter covered
8 must be disregarded. Aside from that the matters touched
9 upon are not important. They are matters of general
10 issue, not directed toward the case of any of the
11 accused.

13 On page 8 the last three questions and answers
14 touch on details of matters covered along broad lines
15 and are duplication, repetition, and of no importance,
16 and there is no probative value from such a source.

17 These objections cover all the questions and
18 answers contained in the witness's affidavit with the
19 exception of those which were eliminated by the prosecu-
20 tion.

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1 GENERAL VASILIEV: Might I be permitted to
2 reply?

3 THE PRESIDENT: By a majority the objections
4 are overruled and the document admitted on the usual
5 terms, but opinions, of course, will be excluded in
6 the usual way.

7 CLERK OF THE COURT: Prosecution document
8 3145 will receive exhibit No. 3858.

9 (Whereupon, the document above
10 referred to was marked prosecution exhibit
11 No. 3858 and received in evidence.)

12 GENERAL VASILIEV: I shall read the document,
13 omitting the formal parts. I will start with the
14 third question on page 2:

15 "Q Who was your predecessor in the post of the
16 assistant military attache?

17 "A Major, later Lieutenant Colonel, Schol.

18 "Q Who was your successor in that post?

19 "A Colonel Niemeler, I believe.

20 "Q Who was your chief?

21 "A Colonel Mazki before December 1940 and
22 Colonel, later Major General, Kretchmer, after that
23 date.

24 "Q With what officers of the Japanese General
25 Staff are you personally acquainted?

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"A With Lieutenant Colonel SAIGO, Major KANDORI,
1 Lieutenant Colonel YAMAGATA, Lieutenant Colonel AKITA,
2 General SUGIYAMA, Gen, Major General OKAMOTO and Prince
3 KANIN.

"Q What post did those officers hold?

"A Prince KANIN and General SUGIYAMA were chiefs
of the Army General Staff; Major General OKAMOTO, chief
of one of the divisions of the General Staff; Lieutenant
Colonel SAIGO and Lieutenant Colonel YAMAGATA, chiefs
of the German division of the Japanese General Staff;
Major KANDORI and Lieutenant Colonel AKITA worked in
the German division of the Japanese General Staff.

"Q Were you personally acquainted with General
TOJO?

"A Yes, I was.

"Q When and under what circumstances did you
make his acquaintance?

"A I made his acquaintance in November 1938
during an outing on horseback in the outskirts of Tokyo
which was arranged for foreign military attaches and
their assistants on the occasion of the conclusion of
the anti-comintern pact.

"Q What post did TOJO hold then?

"A I do not know exactly, but I believe that he
was commander of the army air force.

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"Q How many times did you meet TOJO?

1 "A I met him several times at official receptions.

2 "Q When did you see General TOJO last?

3 "A On January 1, 1943 when I paid him a farewell
4 visit.

5 * * *

6 "Q Did you read any official Japanese documents
7 containing military plans of Japan against the Soviet
8 Union?

9 "A No, I did not read any official documents,
10 but I heard about it during the confidential conversa-
11 tion of the German Ambassador Ott with General TOJO.

12 "Q Tell in detail about that conversation.
13 When did it take place, on what occasion and what was
14 the subject of the conversation?

15 "A It was in the summer of 1942 in June or July
16 when TOJO asked Ott to receive him for a confidential
17 talk. Ott agreed and the conversation took place in
18 Ott's office in the Embassy.

19 "Ott, military attache Kretchmer and I as
20 an interpreter were present at this conversation from
21 the German side. Prime Minister TOJO, two generals,
22 whose names I do not remember, and Captain YAMAZAKI
23 who acted as an interpreter were present from the
24 Japanese side. At that time German troops were very

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1 successful in North Africa and the Japanese supposed
2 that the German army would reach the Suez Canal. At
3 the same time German troops were successfully advanc-
4 ing in the Caucasus.

5 "TOJO said that German troops should advance
6 as far as Aden and Basra and the Japanese to India and
7 Ceylon via Burma and the border line of their sphere
8 of interests would lie along 70° East.

9 "Then TOJO said that the Anglo-Saxons should
10 be driven out of East Asia and that all the sources
11 of raw materials there would provide Germany with the
12 raw materials necessary for her industry.

13 "Then the conversation turned upon the Soviet
14 Far East. I do not remember exactly whether Ott asked
15 TOJO something or TOJO spoke about the Soviet Far
16 East himself. TOJO said that Japan was a mortal
17 enemy of Russia and that Vladivostok was a permanent
18 threat to Japan from the flank and that in the course
19 of that war there was an opportunity of removing that
20 danger. He said that it was not so difficult to do
21 that as there was an excellent Kwantung Army which
22 included the best troops. TOJO gave to understand
23 that Japan intended to make a surprise attack on
24 Vladivostok from land, sea and air at the same time
25 carrying on a diversionary operation against Blagoveshensk.

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I heard the confirmation of that plan of attack on
1 the USSR at different times and under different circum-
2 stances from the interpreter KOGURE, Major KANDORI
3 and Lieutenant Colonel YAMAGATA.

4 "When in 1942 I visited YAMAGATA in the
5 Japanese General Staff in reply to my question how
6 the Japanese intended to attack the Soviet Union
7 showed me in silence the Vladivostok and Blagoveshensk
8 directions on the map.

9
10 "Q Was it discussed during the conference in
11 Ott's office how far Japan intended to send its troops
12 on the territory of the Soviet Union?

13 "A During that conversation TOJO gave to under-
14 stand that it was not sufficient to occupy Vladivostok
15 and Blagoveshensk and that it was necessary to extend
16 the Japanese sphere of influence up to the Lake Baikal.

17 "Q How long did the conference at Ott's of ce
18 last?

19 "A About two hours.

20 "Q What was Ott's and Kretchmer's view of the
21 Japanese plan as expounded by TOJO?

22 "A They kept silence during the conference. During
23 the conference it was TOJO who talked almost exclusively.
24 I know from subsequent conversations with Kretchmer that
25 he was in a pessimistic mood. He thought that the

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1 Japanese were dispersing their forces. He hoped that
2 a concentrated blow would be struck at the Far East,
3 but not at India.

4 "Q What in your opinion was the object of TOJO's
5 visit to Ott?

6 "A I think that TOJO wanted to know from the
7 German ambassador and the military attache whether
8 German troops would reach Aden and Basra at that time.
9 Before launching the offensive TOJO wanted to ascertain
10 if Germany was sufficiently sure of her successes. He
11 wanted to find that out from Ott and the military
12 attache.

13 "Q Did you receive information of military nature
14 pertaining to the Soviet Union from the Japanese General
15 Staff in 1941, 1942?

16 "A Yes, I did. I received that information
17 from Major KANDORI and other officers of the German
18 division of the General Staff.

19 "Q Tell in detail how often you received informa-
20 tion and about what?

21 "A I received all military information about the
22 Russian Far Eastern army, namely: disposition of troops,
23 their strength, military transportations, the details
24 about the reserves, movements of Soviet troops at the

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1 European front as well as the date concerning the
2 war industry in the Soviet Union.

3 "Q How often did you receive information about
4 the military and economic position of the Soviet Union?

5 "A Prior to my leaving the post of assistant
6 military attache I daily visited the Japanese General
7 Staff in order to furnish them with information about
8 the position on German fronts and if they had informa-
9 tion for us from the Russian division it was furnished
10 to me. At first that information was not received so
11 often, but later on I received it twice or three times
12 a week.

13 "Q What use was made of that information?

14 "A That information by means of a ciphering
15 machine was transmitted to the attache department of
16 the OKW in Berlin.

17 "Q Did you often transmit that information to
18 Berlin?

19 "A That information was transmitted as soon as
20 it was received, first rarely and later on oftener.
21 Especially important pieces of information passed
22 through the ciphering bureau of the Embassy.

23 "Q Do you know anything about the technical
24 equipment of the Kwantung Army in that period?

25 "A Major KANDORI, for instance, told me that the

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grenade presented by Hitler to the Japanese General
1 Staff was to be mainly used on the Manchurian place
2 d'armes.

3 "Q Tell in detail about the grenade.

4 "A That was a hollow grenade of great piercing
5 capacity which was to pierce the armor up to 8 centi-
6 meters thick.

7 "Q Under what circumstances did Hitler present
8 the Japanese General Staff with that grenade?

9 "A In spring 1942 Lieutenant Colonel Niemeler
10 and Captain Merkel, both from the Armament Department,
11 arrived in Tokyo on ships breaking through the blockade
12 and brought with them a specimen of a hollow shell
13 with drawings and designs. In a very solemn atmos-
14 phere that shell was turned over by them to the Chief
15 of the Japanese General Staff as Hitler's present to
16 the Japanese Emperor. After that Niemeler and Merkel
17 worked in a special Bureau with Japanese officers
18 from the armament department in order to arrange the
19 serial production of that shell in Japan.

20 "Q How do you know that?

21 "A I learned about that from the conversations
22 of the military attache with Niemeler during which I
23 was present. Besides I personally received for decoding
24 some telegrams addressed to Niemeler from which his

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1 mission in Japan was clear.

2 "Q You said that you saw TOJO during your fare-
3 well visit to him on January 1, 1943. Describe that
4 visit.

5 "A I saw TOJO in his office on account of his
6 invitation of all foreign attaches and their assistants
7 to attend the New Year's festival of 1943.

8 "Q Did TOJO say anything during your visit about
9 the plans of Japan as regards the Soviet Union?

10 "A No, he did not. TOJO only said that Japan
11 would support Germany with different raw materials at
12 her disposal from the occupied areas. As to Germany
13 she had to provide the transport for exporting all
14 those raw materials.

15 "Q Were any raw materials exported during the
16 war from Japan to Germany?

17 "A Yes, many raw materials were exported on
18 German ships breaking the blockade.

19 "Q From whom do you know about that?

20 "A From Admiral Wenneker, German naval attache,
21 and also because in January 1943 I was going to Germany
22 on one of the ships breaking the blockade.

23 "Q What was the name of that transport and what
24 raw and other materials did it carry?

25 "A It was an Italian ship 'Pietro Orseolo.' She

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1 carried over 1000 tons of rubber, 1000 tons of tin and
2 100-200 tons of tea.

3 "Q Where were rubber, tin and tea taken on board?

4 "A They were taken on board in Singapore."

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VON PETERSDORF

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BY GENERAL VASILIEV (Continued):

1 Q Mr. Witness, can you tell us about the con-
2 crete occurrences on which you received information
3 on the military situation in the Soviet Union from
4 the Japanese General Staff?

5
6 A In 1942 we received accurate information as
7 to Russian transport movements out of the area of
8 Khabarovsk on the German-Russian front. It was
9 accurate information regarding the air corps, that is,
10 the Russian air corps, and also the military strength.
11 And in June of 1942 information was received -- accu-
12 rate information was received in regard to the troop
13 movements west of the Tambov area in Stalingrad. In
14 October we received information of Russian troop
15 movements, reserves, that is, in the region of the
16 Caucusus; and also we received, in August, information
17 regarding the monthly production of armored equipment
18 in Russia.

19
20 Q Will you tell, Mr. Witness, was not this
21 information routine information received by the mili-
22 tary attaches in the course of their routine duties?
23 Could the Japanese military attache in the Soviet
24 Union obtain such information by legal means?

25 THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: This is calling for an

1 opinion and a conclusion of the witness, going far
2 beyond the scope of the witness' information and
3 knowledge, and this is going far beyond the original
4 affidavit of the witness.

5 THE PRESIDENT: It is additional evidence,
6 actually. It certainly goes beyond the affidavit in
7 that way. I think the expression "legal means" was
8 used.

9 Will you read it again, English reporter,
10 the question of the prosecutor?

11 (Whereupon, the last question was
12 read by the official court reporter as
13 follows:)

14 "Q Will you tell, Mr. witness, was not this
15 information routine information received by the mili-
16 tary attaches in the course of their routine duties?
17 Could the Japanese military attache in the Soviet
18 Union obtain such information by legal means?"

19 THE PRESIDENT: That may be a question of law.

20 MR. CUNNINGHAM: This witness certainly is
21 not qualified under the present circumstances to
22 answer a question like that.

23 THE PRESIDENT: The objection is upheld.
24 The question is disallowed in that form.

25 Q Mr. Witness, can you tell me of any cases

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1 when the information received by you in the Japanese
2 General Staff and transmitted by you to Berlin was
3 very important for the German military operations
4 against the Soviet Union?

5 MR. CUNNINGHAM: That is asking the witness
6 to evaluate the evidence and invade the province of
7 the Tribunal.

8 THE PRESIDENT: As a military attache he is
9 supposed to know what the value of the information
10 is that he ~~seeks~~ and ~~gets~~.

11 MR. CUNNINGHAM: Further objection, your
12 Honor. Do you think it is fair that the prosecution
13 should be permitted to go beyond the affidavit now
14 without serving us notice what additional information
15 is going to be taken from this witness?

16 THE PRESIDENT: Well, the purpose of affi-
17 davit evidence will be defeated, as I said yesterday,
18 if we allow too many additional questions.

19 MR. CUNNINGHAM: We are under a serious
20 handicap at this stage, even meeting the affidavit
21 evidence, without having to anticipate that they will
22 ask for voluntary information from the witness.

23 THE PRESIDENT: We would assume, of course,
24 in the absence of proof to the contrary, that a mili-
25 tary attache would get only such information as was

1 of some importance to his country, so the question
2 is really redundant.

3 GENERAL VASILIEV: I asked so far only one
4 question, and I have one question more, and I will
5 put it in a somewhat changed form. I am concerned
6 now with facts of which this witness was an eye wit-
7 ness and of which he can inform the Tribunal. It is
8 not out of the scope of the affidavit. It certainly
9 is within the scope of the affidavit, and it only
10 specifies one of the important matters mentioned in
11 the affidavit. The defense always used that method
12 and we never hindered or prevented them from doing
13 so as they are doing it now with regard to us. We
14 did that for technical reasons. My question is as
15 follows:

16 Q What facts, Mr. Witness, can you relate to
17 the Tribunal, the facts which you know from the first
18 source, when the information received by you was used
19 in the military operations against the Soviet Union?

20 THE PRESIDENT: Mr. Cunningham.

21 MR. CUNNINGHAM: Your Honor please, that calls
22 for a broad and sweeping statement on the part of the
23 witness which will enlarge the scope of this affidavit
24 tremendously.

25 THE PRESIDENT: I certainly do not know how

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1 you are going to meet it at this stage.

2 MR. CUNNINGHAM: All of our sources of
3 information have gone back to Germany, your Honor.

4 THE PRESIDENT: That is not the difficulty.
5 He is asked to say how far the information he got
6 was used.

7 By a majority, the objection is sustained
8 and the question disallowed.

9 GENERAL VASILIEV: You may cross-examine now.

10 THE PRESIDENT: It is rather late to start a
11 cross-examination. It is almost noon. We will ad-
12 journ until half-past one.

13 (Whereupon, at 1157, a recess
14 was taken.)

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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.
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3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now resumed.
5

6 THE PRESIDENT: Major Blakeney.
7

8 MR. BLAKENEY: By leave of the Tribunal, I
9 should like to make the remarks which I mentioned this
10 morning relative to the question of recess. The prosecu-
11 tion having been notified we here and I understand
12 willing that we should proceed.
13

14 I should like to be permitted, on behalf of
15 many American counsel sharing a common interest, to
16 add a word to what Dr. UZAWA has said.
17

18 Much evidence, of a heterogeneous nature, has
19 been introduced within the past fortnight, and of
20 course evidence is still being introduced today. The
21 Tribunal has already undertaken to grant to such de-
22 fendants as may be affected the right in proper circum-
23 stances to reopen their cases to meet this. Moreover,
24 as the Tribunal is aware, this evidence has not been
25 introduced even nominally as in rebuttal of the defense
case, but on the basis of a wholly different test, the
application of which has in fact resulted in admission
of much new matter. All this the Tribunal well
realizes, as is evidenced by the President's statement

1 that the admission of evidence on such a basis might
2 compel the reception of still further countervailing
3 proof.'

4 Those of us most interested in the evidence
5 just introduced by the prosecution are, however, pre-
6 cisely the ones who have had the least time to prepare
7 to meet it. Several of us have been engaged in the
8 courtroom, and some quite continuously throughout almost
9 the whole fortnight -- it is nearer three weeks now --
10 and have had not only no opportunity to prepare evidence,
11 but not even in all instances time to study the new
12 matters sufficiently to determine whether evidence
13 should be produced or can be dispensed with. Inasmuch
14 as the entirety of the additional defense evidence
15 is likely to be very brief, we cannot rely on having
16 time during the presentation of such of it as is already
17 prepared to work on other matters.

18 In view of the fact that any time granted but
19 not actually consumed in preparation of evidence will
20 naturally be devoted to making ready the summations,
21 it appears that a brief recess at this time might also
22 result in assistance to the Tribunal by way of more
23 efficient and therefore more valuable summations. For
24 these reasons the American counsel concerned join in
25 moving the Tribunal for a recess of one week at the

1 conclusion of the prosecution's current presentation
2 of evidence.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: If the Tribunal please, I
5 wasn't aware that Mr. Blakeney was going to speak
6 for the rest or I would have given him my notes to
7 incorporate into his. There are just a few additional
8 suggestions that bear upon the case of OSHIMA that
9 did not pertain to the others.

10 We did not have the prosecution's order of
11 proof and evidence until a few days before they actually
12 presented it in court. With the presentation of the
13 evidence which went before we hardly had time to prepare
14 the objections to the evidence which they were going to
15 present in our individual case. It is now necessary
16 for us to prepare affidavits, process documents and
17 conduct additional interviews.

18 As the Tribunal well knows, the prosecution
19 has offered against the accused OSHIMA alone one order
20 list, No. 6, containing documents covering the period
21 of 1938 to 1945 and consisting of thirty documents.
22 Many of these contain new material not mentioned in
23 the principal case of the prosecution or the defense
24 and coming up for the first time in these subsequent
25 proceedings. It was impossible for us to prepare the

1 evidence which we wish to present for the reason that
2 further documents were presented in order of proof Nos.
3 7 and 12 which concerned the accused OSHIMA. Most of
4 the thirty documents which were presented by the prose-
5 cution were excerpts of documents, records and other
6 memoranda the originals of which are in the German
7 language and it is necessary to have them digested
8 before we can even determine whether or not to use them.
9 Many of these will be helpful to us and explanatory as
10 the prosecution has taken little favorable bits of
11 half facts and presented them to the Tribunal as au-
12 thentic and complete thoughts.

13 As we explained before the prosecution was
14 permitted to reopen part 6 of their case, we not only
15 have a problem of language but also of geography.
16 The basic documents for some of these excerpts are
17 still in Germany. Telegrams of sets are taken and
18 the set is still in the hands of the Allies or the
19 Tribunal in Nuernberg.

21 In conclusion, I subscribe to everything
22 that Mr. Blakeney has said, and Dr. UZAWA, and I want
23 to submit to the Tribunal that I believe Dr. UZAWA
24 meant ten court days instead of just ten calendar days,
25 because that is what it will require.

1 THE PRESIDENT: Would Mr. Chief of Counsel
2 care to state the views of the prosecution?

3 MR. KEENAN: May it please the Court:
4 A discussion of the admissibility of any
5 evidence tendered is a moot question at this time.
6 We do not concede that any further evidence on behalf
7 of the defense is admissible. The prosecution attempted
8 to confine the proof it offered to that properly with-
9 in the category of rebuttal evidence as we understood
10 it. The record will show that on no occasion has the
11 prosecution made any application to reopen its case
12 during the presentation of the rebuttal evidence.

13 However that may be, Mr. President, it is
14 our contention that the defense had every opportunity
15 before the rebuttal to meet the points raised by the
16 evidence put in during the rebuttal, but since the
17 matter before the Tribunal at this time, we believe,
18 is confined to an application for a continuance our
19 position in the matter of the admissibility of any
20 further evidence will be submitted fully to the Tri-
21 bunal as the occasion arises and when the proper time
22 occurs.

23 The question of a recess is a distinct ques-
24 tion from the right of the defense to introduce addi-
25 tional evidence but there is, of course, relation

1 between the two. Regardless of what view the Tribunal
2 adopts with regard to the admissibility of further
3 evidence there can be no just ground for the request
4 for a recess. The documents as to which the defense
5 claim the right to answer, even if they should have
6 that right, have been available to the accused in all
7 but one or two instances from the inception of the
8 defense phase of the case. They have had an opportunity
9 to know as much about these documents as the prosecu-
10 tion. In every instance the prosecution offered evi-
11 dence in rebuttal only where the foundation had been
12 laid with such particularity during the defense presen-
13 tation that the accused knew of the dates of various
14 telegrams or conferences and the parties connected
15 therewith as well as the purport of the documents.
16 This body of information the accused possessed in this
17 particularized form during the defense phase at least
18 from the time of the individual phases of the respective
19 accused. All documents were served either twenty-four
20 hours or longer before their use in evidence, and
21 the prosecution began the 12th day of January.
22

23 It is entirely without reason, the prosecu-
24 tion submits, that in the light of all these facts
25 the defense should not be fully prepared. From the
application of the defense it is apparent that they

1 intend to produce at least twenty-six witnesses and
2 over sixty additional documents. It is thus clear
3 that the adjournment sought for is to be used to pro-
4 duce a great mass of material which, under the ruling
5 of the Court, would be inadmissible.

6 Mr. President, with great respect we suggest
7 that all trials have to reach an end at some period.
8 We further submit that it is worthy of deep consider-
9 ation that we started off with an indictment in this
10 case, with an opening statement and particularized
11 opening statements at the beginning of each phase,
12 that the issues have been clearly outlined for a very,
13 very long period of time. The prosecution has had the
14 real burden of gathering the evidence and in sustain-
15 ing its case and it has never asked for a single day's
16 continuance from the 4th of June, 1946, inception of
17 these proceedings. The accused have had two or three,
18 at least two of them of considerable length, and we
19 believe, Mr. President, that we have reached the stage
20 where following the orderly procedure, serving notice,
21 presenting documents, it is high time that the defense
22 adhere to its promises made repeatedly that no further
23 continuances would be asked. We emphatically but
24 respectfully protest.
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MR. BLAKENEY: May I say a word in reply?

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1 THE PRESIDENT: You may.

2 MR. BLAKENEY: So far as concerns these
3 documents which we are said to have had since the
4 beginning of the defense case, we are completely
5 mystified to know what relation that statement has
6 to the evidence now being produced under the guise
7 of rebuttal. The latest order of proof was served
8 upon us on Monday of this week, and then for the first
9 time, as far as I know, we saw those documents. Cer-
10 tainly, the testimony of these witnesses of various
11 nationalities who are being brought in here was not
12 known to us at the beginning of the defense case. If
13 it was said that various defendants, among them, have
14 at present sixty documents which they propose to
15 introduce and concerning the truth of which I am not
16 advised, I might point out that the prosecution have
17 but lately introduced 105 documents taken from the
18 HARADA Memoirs alone. Mr. Chief of Counsel is at
19 liberty, if he pleases, to assume that we wish a
20 recess in order to prepare evidence which the Tribunal
21 will rule unacceptable. But fifty per cent of his
22 documents which I have just mentioned were ruled un-
23 acceptable by the Tribunal, and we don't impute bad
24 faith to them.

25 Any further discussion of the right of the

1 defense to introduce evidence in proper cases is use-
2 less, because the question is truly, as the Chief of
3 Counsel has said, moot. It has been determined by the
4 Tribunal, although of course each proffered piece of
5 evidence remains to be judged on its individual
6 merits.

7 THE PRESIDENT: To what extent do you say
8 it is not rebuttal evidence? Can you give us a
9 rough estimate?

10 MR. BLAKENEY: Well, I am afraid I hadn't
11 thought of it mathematically, your Honor; in fact,
12 I am one of those of whom I spoke in saying that some
13 of us haven't yet had time to assay this material.

14 THE PRESIDENT: We reserve our decision on
15 this application for a continuance.

16 Mr. Cunningham.

17 MR. CUNNINGHAM: I will now proceed with
18 the cross-examination of this witness.
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F R I T Z V O N P E T E R S D O R F, called as
a witness on behalf of the prosecution, resumed
the stand and testified through a German in-
terpreter as follows:

CROSS-EXAMINATION

BY MR. CUNNINGHAM:

Q While you were assistant military attaché in Tokyo, did you have access to all the reports made by Military Attaché Ott between 1934 and the time he became Ambassador in 1938?

1 A No.

12 Q Were you under the direct orders of the
13 military attaché or did you get special or individual
14 instruction from Germany, Berlin?

15 A I received only direct orders from the
16 military attache, Tokyo.

17 Q When you left Berlin, what were your general
18 and special instructions while you were to be assis-
19 tant military attaché in Tokyo?

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: I object to this question because it has a very general form, is without the scope of the affidavit of the witness, and is immaterial and irrelevant.

THE PRESIDENT: Oh, it seems to be within

1 the affidavit, but if Mr. Cunningham is directing
2 his remarks to any particular instructions he may
3 see fit to specify them.

4 MR. CUNNINGHAM: I merely want to compare,
5 for credibility, the answer of this witness with the
6 answer of his superior.

7 THE PRESIDENT: Answer the question.

8 A As I left Berlin I was not sent to Japan
9 as an assistant to the military attaché but as a
10 language officer, and for that reason I received no
11 special instructions.

12 Q When did you become assistant military
13 attaché in Tokyo?

14 A In December of 1938.

15 Q After that time to what duty, particularly,
16 did you devote your major efforts?

17 A I had the orders at that time of inter-
18 pretting the language as a language officer, and also
19 to take care of the telecon correspondence between
20 the Japanese General Staff.

21 Q When did you begin collecting material
22 on your own initiative?

23 A I did not collect material of my own initia-
24 tive, but I carried out the orders of my superior.

25 Q Then you followed only the instructions

1 which were given to you by your military attache and
2 did not collect any material -- independent investiga-
3 tion of your own; is that correct?
4

5 THE PRESIDENT: General Vasiliev.

6 GENERAL VASILIEV: This question has been
7 answered by the witness, and there is no need to
8 repeat it for the second time.

9 THE PRESIDENT: I cannot say whether it has
10 been or not. I am not sure.

11 MR. CUNNINGHAM: I merely want to discover
12 if he was operating on special missions or a general
13 mission.

14 THE PRESIDENT: Answer the question.

15 A I was under orders of the military attache,
16 and I carried out his orders.
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1 Q Did you make your reports direct to him,
2 or did you make any independent reports to Berlin?

3 A Directly to the military attache.

4 Q At any times, did you make any direct
5 reports to the ambassador?

6 A No.

7 Q Did the military attache send your reports
8 as you gave them to Berlin, or were they consolidated
9 and sent in as one with his report?

10 A Usually they were worked together in con-
11 junction with his reports, and sometimes they were
12 sent separately.

13 Q Under what conditions were they sent
14 separately? What was the nature of reports which would
15 go to Berlin which you made and which were separate
16 from the reports of the military attache?

17 A The military attache, himself, determined
18 which reports were to be sent directly and which were
19 not to be sent directly. There was no special regula-
20 tion following this matter.

21 MR. CUNNINGHAM: I might say, at the recess
22 I will try and give the interpreters the questions so
23 that they can work on them in the meantime, and the
24 interpretation will be facilitated in that way.

25 THE PRESIDENT: Is it really necessary to

cross-examine on such details, Mr. Cunningham?

1 MR. CUNNINGHAM: As the foundation for the
2 one vital point involved in this cross-examination,
3 yes, your Honor.

4 Q Now, you wish to tell us that you had free
5 access to the highest-ranking military officers of
6 Japan officially; or did you have to have special per-
7 mission of the military attache, himself, before you
8 were permitted to have conference with these high
9 military officers of Japan?

10 A I was at all times in the presence of these
11 Japanese high officials only in the presence of the
12 attache and as his assistant.

13 Q Your principal contact was with the junior
14 officers of the German Division of the Japanese General
15 Staff, isn't that correct?

16 A I was associated directly with the officers
17 of the General Staff of the German Section.

18 Q And do you know the principal mission of the
19 military attache of the German Embassy in the collection
20 of material and information?

21 A Our capacity was as is the normal capacity
22 for exchange of information between two countries.
23 However, due to the alliance, we at times received
24 additional information.

Q What information did you consider of value?

1 Intelligence reports on the movements in Soviet Russia
2 and Mongolia? Was that your principal mission?

3 THE PRESIDENT: General Vasiliev.

4 GENERAL VASILIEV: The defense objected to
5 a similar question propounded by the prosecution,
6 asserting that the witness is not qualified to reply
7 to it. I object to the question propounded by the
8 defense on a similar ground.

9 MR. CUNNINGHAM: The Court overruled it,
10 I believe, and there is not sufficient connection
11 between those two. This is a direct question as to
12 the mission.

13 THE PRESIDENT: The objection is overruled
14 and the question allowed.

15 A This was naturally only a part of my reports.
16 It did not, as a total, resolve around the problem of
17 Mongolia or of Soviet Russia.

18 Q But you did consider the collection of
19 information about the movements and the dispersal of
20 Soviet troops as a part of the routine information
21 which you would seek in the performance of your duties,
22 is that right?

23 A This was not only a routine matter, but was
24 a very important part of the cooperation between the

German and the Japanese.

1 Q But you considered that your principal mission
2 as assistant military attaché, then?

3 A That was one of the important problems.

4 Q And it was one of the important missions of
5 the military attaches and their assistants of every
6 other embassy in Tokyo at that time, was it not?

7 THE PRESIDENT: He can testify to his own
8 views, of course. He may know what others did, also.

9 Q Are you familiar with the type of information
10 that the military attaches and the assistant military
11 attachés of the other embassies in Tokyo were seeking
12 at the same time you were seeking this information?

13 GENERAL VASILIEV: I object to this question
14 because it is irrelevant and goes beyond the scope of
15 the affidavit.

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1 THE PRESIDENT: I am not sure about that. I
2 will hear you on that, Mr. Cunningham.

3 He did not come here to testify about the duties
4 of other military attaches of other countries, and I do
5 not see how you can test his credibility that way.

6 MR. CUNNINGHAM: Well, the reason behind it is
7 that the prosecution has inferred that the military
8 attache and OSHIMA had a special assignment of some kind
9 when he was out to collect the same kind of information
10 in Europe that this witness has here, and I ought to be
11 able to show through him that is that same kind of in-
12 formation sought by other military attaches in Tokyo.
13 There must have been an exchange of ideas.

14 THE PRESIDENT: This American rule I am not so
15 familiar with, but the objection is sustained and the
16 question disallowed. Those who are familiar with the
17 rule are against you, Mr. Cunningham, and others.

18 MR. CUNNINGHAM: Well, it is a late time to
19 argue the merits of that rule, but I have always con-
20 tended that was not the American rule, but it is too
21 late in the case to argue that point now.

22 BY MR. CUNNINGHAM (Continued):

23 Q Did not the military attaches and the assistant
24 military attaches of the various embassies in Tokyo have
25 an organization where they met occasionally for the

exchange of ideas and information?

1 THE PRESIDENT: We are all of the opinion that
2 the cross-examination should be directed more to the
3 matters testified to by the witness in his affidavit and
4 subsequently.
5

6 The last question is outside the scope of the
7 affidavit and is not allowed.
8

9 Q Did your investigations and the reports of your
10 chief military attache cover other activities besides
11 military operations?
12

13 A As far as I know, no.
14

15 Q Weren't you more interested in the collection
16 of material concerning the activities of the Russian
17 Army than you were the exchange of ideas about the
18 Japanese Army?
19

20 THE PRESIDENT: General Vasiliev.
21

22 GENERAL VASILIEV: I don't see the relevancy
23 of this question to the issues of the case. And in any
24 case, this subject matter is not treated in the affidavit
25 and therefore I object to this question.
26

27 MR. CUNNINGHAM: The witness says in his affi-
28 davit that he made a thorough investigation as to the
29 strength of the Kwantung Army in Manchuria, and that
30 relates very directly to the opposite army on the other
31 side.
32

1 THE PRESIDENT: How does that investigation
2 relating to the Kwantung Army involve an investigation
3 relating to the Soviet Army?

4 MR. CUNNINGHAM: Well, certainly, your Honor,
5 a military attache doesn't make an investigation into
6 the strength of one army without making an analysis
7 of the troop movements and the organization of the
8 army opposite it. That is unnatural.

9 GENERAL VASILIEV: The question of the
10 strength of the Manchurian Army was stricken out from
11 the affidavit. There is no discussion about this. That
12 is a mistake.

13 THE PRESIDENT: The objection is sustained
14 and the question disallowed.

15 BY MR. CUNNINGHAM (Continued):

16 Q Now, more specifically, was your main mission
17 to gather information about the Russian Far Eastern
18 Army, namely, the disposition of troops, their strength,
19 equipment, date of training, transportation and the
20 details about their reserves?

21 THE PRESIDENT: General Vasiliev.

22 GENERAL VASILIEV: This question has been
23 answered by the witness at least three times. I see
24 no need of putting it to him again.

25 MR. CUNNINGHAM: I am just checking on the

witness because that leads up to the next question.

1 May the witness answer?

2 THE PRESIDENT: Yes, he may.

3 Q Was that your main mission?

4 A I would like to have the question repeated.

5 (Whereupon, the last question was
6 read by the official court reporter.)

7 THE PRESIDENT: Why do you want to ascertain
8 what his main mission was? He has told us what the
9 important missions were. He told us in his affidavit
10 he received such information. But whether it was his
11 main duty or not is beside the point, is it not? It
12 certainly is a different question but does not lead
13 us anywhere. We are all becoming apprehensive at the
14 waste of time involved in a detailed cross-examination
15 that does not help at all.

16 MR. CUNNINGHAM: Well, your Honor, on a
17 cross-examination you just don't ask a man: "Did you
18 kill the man?" You have to kind of lead up to it with
19 a few details.

20 THE PRESIDENT: Does that assist us in drawing
21 any sharp distinction between main missions and
22 important missions?

23 MR. CUNNINGHAM: I think it has a bearing.

24 THE PRESIDENT: We do not.

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MR. CUNNINGHAM. Did the witness answer the last question?

THE PRESIDENT: He need not answer it. The objection is allowed.

BY MR. CUNNINGHAM (Continued):

Q Did you discuss the information which you gathered with others in the German Embassy besides the military attaché?

A No.

Q Did you discuss with others in the German Embassy besides the military attache information which they had gathered and collected?

3 A It was since 1940 a specific command that no
4 one would discuss his work with any other person.

5 MR. CUNNINGHAM: May I take the next question
6 after recess?

THE PRESIDENT: We will recess for fifteen
minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

F R I T Z V O N P E T E R S D O R F, called
as a witness on behalf of the prosecution,
resumed the stand and testified through a
German interpreter as follows:

THE PRESIDENT: Mr. Cunningham, the Members
of the Tribunal have had under discussion the nature of
your cross-examination. They cannot see that your
questions are leading anywhere. They appear to the
Court to be of no importance in elucidating anything.
We hope if you are coming to some important phase of
your cross-examination, you will lose no time in reach-
ing it.

MR. CUNNINGHAM: Well, now, I presume the
Members of the Tribunal appreciate that in all the
negotiations between the Japanese and the Germans and
the evidence put on by the prosecution, this is the
first and only live witness that has been on the stand.

THE PRESIDENT: That is the reason why the
cross-examination should be directed immediately to
serious and important matters.

MR. CUNNINGHAM: I am only interested in one
thing and that is the source of that information, and

1 I expect to get at it if I am just permitted.

2 THE PRESIDENT: Well, come to it as soon as
3 you can.

4 MR. CUNNINGHAM: May I have the last question
5 before the recess?

6 (Whereupon, the official court
7 reporter read as follows:)

8 "Did you discuss with others in the German
9 Embassy besides the Military Attaché the information
10 which they had gathered and collected?"

11 THE WITNESS: No.

12 CROSS-EXAMINATION

13 BY MR. CUNNINGHAM (Continued):

14 Q In your search for information you suggest
15 that in addition to the Japanese General Staff you
16 received information about the strength of the
17 Kwantung Army in different periods from the German
18 correspondent Richard Zorge, is that right?

19 GENERAL VASILIEV: Mr. Cunningham knows well
20 that this part of the affidavit has been stricken out,
21 and therefore I object to the question.

22 THE PRESIDENT: Is there anything left in the
23 affidavit which would support such a question? That
24 is the point.

25 GENERAL VASILIEV: Nothing whatsoever.

MR. CUNNINGHAM: May I answer now?

THE PRESIDENT: You may.

MR. CUNNINGHAM: Your Honors, if you will remember, when we withdrew several matters from affidavits in the TOGO case -- I guess you perhaps were here then -- the cross-examination only covered the amount of those affidavits which we withdrew, and the Court allowed it.

THE PRESIDENT: It doesn't matter how much was withdrawn. The question is, How much is left? That is the foundation on which the question can be put.

MR. CUNNINGHAM: Well, now, your Honors, from reading this affidavit in toto is not the material question here, 'What was the source of your information? Now, that is what I am asking this witness: What was the source of your information? He gives me the lead here.

THE PRESIDENT: How are we concerned now with the sources of his information? What sort of inquiry would that lead to? Where would the end of it be? What is the relevance and materiality of the sources of this man's information?

MR. CUNNINGHAM: Well, I will tell you, your Honor, if you want me to tell you: The source of this witness's information was exactly the same as Ambassa-

1 dor Ott's source of information, and I want to show that
2 both of them were getting their information from the
3 same source; and if I can show that source, then there
4 is no worry after that.

5 THE PRESIDENT: Well, if it be important, short-
6 en it by asking him whether his sources of information
7 were the same as Ott's. It is as clear as that.

8 MR. CUNNINGHAM: It is not, though. It is one
9 of the most complicated things in this case, if you would
10 like to know.

11 THE PRESIDENT: Counsel might hang up a court
12 indefinitely by making those assertions. We take noth-
13 ing on trust like that; you have to satisfy us that you
14 are not wasting our time, and you haven't done it.

15 MR. CUNNINGHAM: Well, your Honor, I have never
16 understood it is necessary for counsel to reveal to the
17 Court the object of his cross-examination, to inform the
18 witness.

19 THE PRESIDENT: Ordinarily it is not; the
20 Court can see what counsel is driving at. But this is
21 an abnormal situation.

22 MR. CUNNINGHAM: That is right.

23 GENERAL VASILIEV: May the defense counsel be
24 directed to pass on to the next question, so as not to
25 waste the time of the Tribunal.

1 MR. CUNNINGHAM: I would like to have the
2 witness answer that question, because it is a very
3 important question and it bears right on the nose of
4 this case.

5 THE PRESIDENT: We will disallow yours and I
6 will repeat mine.

7 Did you and Ott get your information from the
8 same sources?

9 THE WITNESS: I received my information from
10 the Japanese General Staff, and I don't know the source
11 of information of Doctor Ott -- primarily from the Jap-
12 anese General Staff.
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1 MR. CUNNINGHAM: May I ask that the witness be
2 shown prosecution document 3145, the last exhibit?
3 (Whereupon, a document was handed
4 to the witness.)

5 I would like to refer to the middle of page 6
6 of the English copy and I would like to have the witness
7 instructed what page that is in the Russian copy. It
8 is in Russian.

9 THE PRESIDENT: General Vasiliev.

10 GENERAL VASILIEV: Mr. Cunningham knows that
11 the middle of page 6 was stricken out.

12 THE PRESIDENT: Well, I don't know what ques-
13 tion he is going to put. It is too early to object.

14 MR. CUNNINGHAM: I will refer to the middle --

15 THE PRESIDENT: There are two questions left
16 on page 6 and two answers.

17 MR. CUNNINGHAM: Well, that certainly doesn't
18 preclude me from cross-examining on anything in this
19 document if I want to. That is what I understand. When
20 we have a document here from the prosecution, contain-
21 ing information, whether it is a document or an exhibit,
22 we have a right to cross-examine on it. That has always
23 been the rule.

24 THE PRESIDENT: That is not so. The parts
25 struck out are not in evidence and you are not at liberty

1 to cross-examine on the assumption that it is. You
2 can put that matter independently of the document if
3 the rest of the document, the part admitted, permits of
4 that course.

5 MR. CUNNINGHAM: I would like to straighten that
6 thing out, your Honor. It certainly can't make any
7 difference whether I use for cross-examination a docu-
8 ment which is in evidence or a document which is not in
9 evidence.

10 THE PRESIDENT: I said you are not to put that
11 stricken part before him on the assumption that it was
12 in evidence. I cannot be clearer than that.

13 You could ask him if you wish -- I don't know
14 whether it applies here -- whether he has not already
15 made a statement inconsistent with his present testimony,
16 and if he says he has not, then you may be able to tender
17 that stricken part.

18 MR. CUNNINGHAM: I thought I would like to ask
19 him this: On May 12, 1947 did you say the following?

20 THE PRESIDENT: You may do that. As long as you
21 do not lead him to think that this is already in evidence
22 there is no objection to that course.

23 BY MR. CUNNINGHAM:

24 Q . On May 12, 1947, were the following questions
25 asked of you and did you give the following answers?

1 "Are you aware of the strength of the Kwantung
2 Army in different periods?

3 "Answer: Yes, I am.

4 "Question: From what source do you know that?

5 "Answer: Partly from the Japanese General
6 Staff, from the German correspondent, Richard Zorge,
7 from whom we received exact data as to the number of the
8 Kwantung Army divisions, and some of their numbers.
9 From the German Mission in Manchuria we also received
10 some data as to the strength of the Kwantung Army."

11 Were those questions asked and did you give the
12 answers?

13 A Yes.

14 Q Now, concerning the German correspondent,
15 Richard Zorge, from whom you received "exact data as to
16 the number of Kwantung Army divisions and some of their
17 numbers," what position did Richard Zorge hold in the
18 German Embassy at any time?

19 THE PRESIDENT: General Vasiliev.

20 GENERAL VASILIEV: If the Tribunal please, I
21 object to that question because it is out of the scope
22 of the affidavit and it has no relevance whatsoever to
23 the issues involved in the case. We submit that the data
24 the witness has concerning the strength of the Kwantung
25 Army is so incomplete and unreliable that we decided to

1 strike out this part of the affidavit, because this data
2 he had would bring no help to the Tribunal.

3 We have the right to tender in evidence or not
4 to tender in evidence certain parts of the affidavit.
5 We tendered in evidence only that part of the testimony
6 of the witness which relates to the data he received
7 from the Japanese General Staff. All the rest is out of
8 the scope of the affidavit, and therefore we object.

9 THE PRESIDENT: Well, they may be related. I
10 must confess I am in some doubt. The objection is over-
11 ruled and the question allowed.

12 BY MR. CUNNINGHAM:

13 Q Did you let the other attaches in the German
14 Embassy --

15 Oh, I thought he had answered before they made
16 the objection.

17 (Whereupon, the German interpreter
18 repeated the last question.)

19 A Zorge was a correspondent on a German news-
20 paper and had no special post in the German Embassy.
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Q Did you submit any of your reports to
1 Zorge before you sent them to Germany or to your
2 military attache? Did you take him into your confi-
3 dence?

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: If the Tribunal please, the question asked is not connected in any way with the affidavit of this witness and it violates all the rules established by the Tribunal with regard to cross-examination and, therefore, I submit, it should be rejected -- it should be disallowed.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: The information which this witness obtained from Zorge is of vital importance to this Tribunal apparently or they would not have included it in the affidavit in the first place. The source of the information of this witness is also important, and it will be shown that the source of this witness' information was the source of Ott's information. if we are given a couple minutes' time.

THE PRESIDENT: The objection is sustained and the question not allowed.

Q Are you not familiar with the fact that Richard Zorge was a member, an employee of the German Embassy in Tokyo from the year 1939 until October 1941

Q Did you submit any of your reports to Zorge before you sent them to Germany or to your military attache? Did you take him into your confidence?

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: If the Tribunal please, the question asked is not connected in any way with the affidavit of this witness and it violates all the rules established by the Tribunal with regard to cross-examination and, therefore, I submit, it should be rejected -- it should be disallowed.

THE PRESIDENT: Mr. Cunningham.

MR. CUNNINGHAM: The information which this witness obtained from Zorge is of vital importance to this Tribunal apparently or they would not have included it in the affidavit in the first place. The source of the information of this witness is also important, and it will be shown that the source of this witness' information was the source of Ott's information, if we are given a couple minutes' time.

THE PRESIDENT: The objection is sustained
and the question not allowed.

Q Are you not familiar with the fact that Richard Zorge was a member, an employee of the German Embassy in Tokyo from the year 1939 until October 1941

1 and was on the pay roll of the German Embassy? Are
2 you not familiar with that fact?

3 THE PRESIDENT: Hasn't he already answered
4 that?

5 MR. CUNNINGHAM: That may refresh his
6 recollection.

7 THE PRESIDENT: We do not want his answers
8 twice. If I recollect rightly he said Zorge was not
9 employed by the German Embassy.

10 Was Zorge ever employed by the German Embassy?

11 THE WITNESS: No, he was not employed.

12 Q Well, then, if an official report of the
13 United States Government records it otherwise, they
14 are mistaken; is that right?

15 THE PRESIDENT: Is that report in evidence
16 or do you propose to prove it? We do not want his
17 answer three times to that question unless it is some-
18 thing exceptional.

19 MR. CUNNINGHAM: I am quite sure the prosecu-
20 tion will not want it in evidence, your Honor, and I
21 don't propose to offer it. I propose to cross-examine
22 on it.

23 GENERAL VASILIEV: It is not a question
24 actually. It is simply a conversation between the
25 defense counsel and the witness and, therefore, I

object to such method of conducting cross-examination.

1 THE PRESIDENT: We do not want his answer
2
3 the third time.
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Q Then, after the outbreak of the European War,
1 do you recall that Ambassador Ott designated Zorge as
2 a member of the Press Attache's office of the Embassy,
3 putting him on the payroll and giving him the strength
4 of official position? Don't you remember that?

5 THE PRESIDENT: General Vasiliev.

6 GENERAL VASILIEV: I object to this question,
7 your Honor. This question, in substance, is just the
8 same as the previous questions; and, besides, it
9 violates all the established rules of cross-examina-
10 tion, and I should like the counsel to be reminded of
11 that because it is a simple waste of time.

12 THE PRESIDENT: How do you distinguish it,
13 Mr. Cunningham? It is the same type of question as
14 the previous one, as the General says. The objection
15 is sustained.

16 MR. CUNNINGHAM: This may refresh his
17 recollection.

18 Q Most mornings after Zorge had sent out the
19 press releases on the progress of the war in Europe
20 he joined the Ambassador over late breakfast; don't
21 you remember that?

22 THE PRESIDENT: General Vasiliev.

23 GENERAL VASILIEV: I object to that question.
24 It shows the persistence of Mr. Cunningham, but it

1 shows no relevancy to the issues involved in the
2 case. Correction: It does credit to the persistence
3 of Mr. Cunningham, but it has no relevance to the
4 issues of this case.

5 THE PRESIDENT: The same type of question.
6 Objection sustained.

7 Q Do you recall --

8 THE PRESIDENT: There must be a limit to
9 this kind of thing. We are still in control of the
10 Court, Mr. Cunningham, and we are going to retain
11 control. This is sheer waste of time, and with what
12 purpose we would like to know. We can only guess.
13 The denials have been explicit and repeated, and
14 there is no scope for this further alleged testing
15 of memory.

16 MR. CUNNINGHAM: Well, your Honor, the wit-
17 ness has already testified that he answered the ques-
18 tion in Moscow about the source of his information,
19 Richard Zorge. Now, I would like to show, if I can
20 have the opportunity, that Richard Zorge, through
21 whom this witness was getting his information and
22 through whom Ambassador Ott was getting all of his
23 information, to whom Ambassador Ott was showing his
24 telegrams from Germany and from whom Ambassador Ott
25 was getting advice, was the most notorious Russian

1 spy, one of them, in history. Now, that is all I want
2 to show.

3 THE PRESIDENT: In our judgment, and so far
4 I know of no dissent, you are not likely, in view of
5 your cross-examination up to this point, to get any
6 admission of the kind from this witness, and it is
7 only waste of time to repeatedly question him. We
8 must exercise our judgment in these matters. We are
9 not shutting out any proof of the kind that you have
10 in mind. But we have come to the conclusion that you
11 are not going to establish it through this witness in
12 view of his repeated denials. If you had shaken this
13 witness in any way on the subject, we might allow you
14 to continue, but there is no evidence of that.

15 MR. CUNNINGHAM: Well, I thought maybe you
16 would let me go a little farther, your Honor, than
17 ordinarily because you must appreciate the situation
18 that I tried every possible way to bring Ambassador
19 Ott here himself, and this Court was powerless to
20 bring that man here with all of its power. Now, after
21 this witness knows that I know the facts, maybe he
22 will say, "Well, now, that does refresh my recol-
23 lection," if he is let alone.

24 THE PRESIDENT: Well, we think it is useless
25 to persist further with the cross-examination on that

1 particular subject, Mr. Cunningham. That is the .
2 unanimous verdict of the Court as far as I can gather.
3 I know of no dissent.

Having affirmed that for the second time, I
am now to ' it is a majority.

6 MR. CUNNINGHAM: On the basis of that, I
7 will go to something else.

8 Q Did your military attache report to the
9 ambassador direct or to the High Command in Berlin?

10 A Directly to Berlin.

11 Q Was that the usual procedure for military
12 attaches as far as you know under German military
13 instructions?

14 A That was the method in Tokyo.

15 Q In addition to having access to the Japanese
16 General Staff members, did you have access, the mili-
17 tary attache with you, to the Japanese governmental
18 officials direct for the gathering of information?

19 A As far as I can recall, I visited with the
20 military attache only Japanese military organizations.

22 Q So, then you say you had no access for information along the political line.

24 A As assistant to the military attaché, that
25 was the case.

Q Did you and the military attache ever take

1 Zorge with you to the General Staff when you went out
2 for information?

3 A No.

4 Q Did you know Crome, the newspaperman,
5 associate of Zorge?

6 THE PRESIDENT: General Vasiliev.

7 GENERAL VASILIEV: I object to this question
8 because this is the same line of questioning which has
9 been already ruled by the Tribunal, and I submit that
10 defense counsel Cunningham again tries to waste the
11 time of the Tribunal, and the Tribunal has decided as
12 a matter of principle that this line of questioning
13 does not help.

14 THE PRESIDENT: What is the difference be-
15 tween him and Zorge in this respect, Mr. Cunningham?

16 MR. CUNNINGHAM: I have an affidavit from
17 Crome on this matter that might be pertinent.

18 THE PRESIDENT: Well, answer the question,
19 witness. The objection is overruled.

20 A I know Crome personally. He was a German
21 correspondent in Tokyo.

22 Q Now, you mention in your affidavit that
23 routine reports and intelligence reports were sent to
24 Berlin through your own office and kept in your own
25 secret file, is that correct?

1 A The reports were kept in the safe of the
2 military attache.

3 Q You say that only special items were sent
4 through the Embassy. Can you give an example of what
5 you consider a special item?

6 A I cannot recall in detail, but the attache
7 himself determined which reports would be sent directly
8 through the cipher system of the Embassy.

9 THE PRESIDENT: We will adjourn until half-
10 past nine tomorrow morning.

11 (Whereupon, at 1600, an adjourn-
12 ment was taken until Thursday, 29 January,
13 1948, at 0930.)

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